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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION/NO.
09/787,750	05/21/2001	John Skalen	P/1629-43	6152

2352 7590 12/05/2001

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NEW YORK, NY 100368403

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 12/05/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/787,750

Applicant(s)  
SKALEN

Examiner  
M. Chambers

Art Unit  
3711



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Mar 21, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-5 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-5 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3

20) ☐ Other:

This Office Action is a response to the Application filed on:

Number	Name	Date	Claims	Independent Claims
09787750	SKALEN	3/21/01	5	1

### DETAILED ACTION

#### *Drawings*

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 3,4 and 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

#### *Specification*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "characterized" used in claims 1-5 is indefinite and vague. And the term "substantially rigid line" used in claim 1 appears inaccurate. It is unclear from the claim language and the specification what is being claimed. One of ordinary skill in the art would not be able to clearly define the metes and bounds of the invention.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 are rejected under 35 U.S.C. 103(a) as obvious over **the British reference**

**(Deane) in view of Windall.** Deane discloses the elements of claim 1. However it does not clearly

disclose the use of indicia placed on the tether. Windall discloses the use of indicia on the tether (15,17,18). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the indicia of Windall with the apparatus of Deane in order to reduce the manufacturing cost and reduce the number of sub-components of the apparatus. Note that the phrases in the claim directed to the intended manner of use of the device cannot be used to distinguish over prior art disclosing the structure.

As to claim 2: No criticality is granted for the dimensions cited. It would have been obvious to one of ordinary skill in the art at the time of the invention to have selected an appropriate length and size of the tether to insure the apparatus to operate in an appropriate manner.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art cited in view of Official Notice. Official notice is given that attachment of balls and tethers are well known in the art. One of ordinary skill in the art would have selected an appropriate attachment means from one of many equivalent attachment means.

### *Conclusion*

The prior art made of record and relied upon.

Patent Number	Date	Patent Name	Notes
3122369	12/25/64	Windall	1449 doc
GB401955	11/23/33	Deane	1449 doc

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Patent Number	Date	Patent Name	Notes


**NOTE:**

***1) If Applicant believes they have not received all of the cited references noted in this office action, they should call the examiner listed below within one (1) week of receiving this notice in order to obtain duplicate material and reset the time frame of this office action. If the applicant fails to request additional materials in a timely manner, the requested materials will be resent, but the applicant will have to obtain a time extension in the normal fashion.***

***2) Unless claims are noted on the office action summary page and this document as allowable, all claims are rejected. If a typing error creates a some confusion, the examiner apologizes for the error and requests the examiner be contacted to resolve the question.***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chambers whose telephone number is (703) 306-5516. The examiner can normally be reached on Mon.-Fri. from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302--After final fax number-- (703) 872-9303.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1078.

  
Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700